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**Datasheet for the decision  
of 8 October 2025**

**Case Number:** T 0780/23 - 3.5.04

**Application Number:** 16863007.7

**Publication Number:** 3374805

**IPC:** G01W1/00, H04W4/38

**Language of the proceedings:** EN

**Title of invention:**

ATMOSPHERIC SENSOR NETWORK AND ANALYTICAL INFORMATION SYSTEM  
RELATED THERETO

**Patent Proprietor:**

Scepter Incorporated

**Opponent:**

Airbus Defence and Space SAS

**Headword:**

**Relevant legal provisions:**

EPC Art. 84, 111(1), 123(2), 123(3)

EPC R. 43(7)

RPBA 2020 Art. 11, 12(3), 12(5), 13(2)

**Keyword:**

Claims - interpretation of ambiguous terms

Amendments - allowable (no - main request, yes - first auxiliary request)

Appeal decision - remittal to the department of first instance (yes)

**Decisions cited:**

G 0010/91, G 0003/14, T 2117/18, T 2214/21

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0780/23 - 3.5.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.04**  
**of 8 October 2025**

**Appellant:** Scepter Incorporated  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 28 February  
2023 revoking European patent No. 3374805  
pursuant to Article 101(3)(b) EPC.**

**Composition of the Board:**

**Chair** B. Willems  
**Members:** M. Paci  
B. Burm-Herregodts

## Summary of Facts and Submissions

- I. The appeal is against the opposition division's decision dated 28 February 2023 revoking European patent No. 3 374 805 pursuant to Article 101(3)(b) EPC.
- II. The decision under appeal was based on the following grounds.
- Claims 1 and 12 of the **main request (MR)** and of **auxiliary requests AR1 to AR11 and AR16 to AR20** then on file comprised subject-matter extending beyond the content of the application as filed in violation of Article 123(2) EPC.
  - Claims 1 and 12 of **auxiliary requests AR12 to AR15 and AR21** then on file and claim 1 of **auxiliary request AR22** then on file extended the protection conferred by the patent in violation of Article 123(3) EPC.
- III. The patent proprietor (hereinafter "appellant-proprietor") filed notice of appeal. With its statement of grounds of appeal, the appellant-proprietor filed claims according to a **main request (AMR)** and **auxiliary requests AAR1 to AAR17**, replacing the previous requests on file.
- IV. In its reply to the statement of grounds of appeal, the opponent (hereinafter "respondent-opponent") requested, as a main request, that the decision under appeal be upheld (i.e. that the appeal be dismissed) and, as an auxiliary request, that the case be remitted to the opposition division for further prosecution of, *inter alia*, the grounds for opposition under Article 100(a)

and (b) EPC (see page 2 of its letter of reply dated 26 October 2023).

V. The board issued summons to oral proceedings and a communication under Article 15(1) RPBA (Rules of Procedure of the Boards of Appeal). In this communication, the board set out its interpretation of the expressions "*air pollution observation data*", "*air pollution observations*", "*air pollution data*" and "*specific to an end-user*" and gave the preliminary opinion that the appellant-proprietor's main request met the requirements of Articles 123(2) and 84 EPC. Since both parties had requested that the case be remitted to the opposition division if the board came to the conclusion that at least one of the sets of claims filed with the statement of grounds of appeal met the requirements of Article 123(2) and (3) EPC and remittal to the opposition division was normally considered appropriate if the opposition division had left particular issues undecided, the board was of the preliminary opinion that special reasons justified remittal in accordance with Article 11 RPBA.

VI. In its reply dated 28 August 2025, the appellant-proprietor expressed its agreement with the board's view set out in its preliminary opinion.

VII. In its reply dated 8 September 2025 the respondent-opponent commented on the board's preliminary opinion.

VIII. The board held oral proceedings on 8 October 2025.

During the oral proceedings, the appellant-proprietor reordered its auxiliary requests by making auxiliary request AAR14 its first auxiliary request.

The **appellant-proprietor's final requests** were

- that the decision under appeal be set aside and that, should the board find that at least one request meets the requirements of Article 123(2) and (3) EPC, the case be remitted to the opposition division for consideration of the other grounds for opposition,
- that the renumbering of auxiliary requests AAR1-AAR17, with auxiliary request AAR14 becoming the new first auxiliary request, be found allowable,
- that the respondent's arguments under Article 123(2) EPC regarding "objection 2" in the board's communication under Article 15(1) RPBA not be admitted into the proceedings under Article 13(2) RPBA and
- that the arguments under Article 84 EPC submitted by the respondent during the oral proceedings against the renumbered first auxiliary request (previously auxiliary request AAR14) not be admitted into the proceedings under Article 13(2) RPBA.

The **respondent-opponent's final requests** were

- that the decision under appeal be upheld (i.e. that the appeal be dismissed),
- as an auxiliary measure, that the case be remitted to the opposition division for further prosecution of, *inter alia*, the grounds for opposition under Article 100(a) and (b) EPC,
- that the respondent's refined arguments under Article 123(2) EPC regarding "objection 2" for the main request be admitted (because they are not a modification of means pursuant to Article 13(2) RPBA),
- that the reordering of auxiliary requests AAR1 to AAR17 not be allowed under Article 13(2) RPBA because it is a late-filed modification of means with no exceptional circumstances,

- that auxiliary requests AAR4 to AAR17 not be admitted into the proceedings pursuant to Article 12(3) and (5) RPBA, and
- that all the respondent's arguments under Article 84 EPC against the first auxiliary request (previously auxiliary request AAR14), including those raised against the main request and those raised specifically against the first auxiliary request, be admitted into the proceedings.

At the end of the oral proceedings, the Chair announced the board's decision.

IX. Claims 1 and 12 of the **main request** read as follows:

*"1. A network-based system for providing real-time or near-real-time air pollution observations and information derived therefrom, the system comprising:*

- a. a plurality of low earth orbit satellites (100) carrying atmospheric air pollution observation instruments providing global coverage of the earth configured to obtain air pollution observation data from ground level through the stratosphere;*
- b. a plurality of manned or unmanned aerial vehicles (282, 285, 290, 294) carrying atmospheric air pollution observation instruments (283, 287, 291, 295) configured to obtain air pollution observation data;*
- c. a plurality of terrestrial sensor stations (135, 255, 270, 298) containing atmospheric air pollution observation instruments configured to obtain local air pollution observation data;*
- d. a data storage facility (160) configured to store the obtained air pollution data;*
- e. data modeling software (165) configured to correlate the obtained atmospheric air pollution observations and to derive, from the correlated atmospheric air*

*pollution observations and information specific to an end-user, at least one of actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user; and*  
*f. a data delivery platform configured to provide at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user."*

*"12. A method of providing real-time or near-real-time air pollution observation services to an end-user, the method comprising:*

- a. acquiring air pollution observation data from a group of low earth orbit satellites (100) carrying atmospheric air pollution observation instruments and sensors providing global coverage of the earth from ground level through the stratosphere;*
- b. acquiring air pollution observation data from a plurality of manned or unmanned aerial vehicles (282, 285, 290, 294) carrying atmospheric air pollution observation instruments (283, 287, 291, 295);*
- c. acquiring local air pollution observation data from a plurality of terrestrial sensor stations (135, 255, 270, 298) containing atmospheric air pollution observation instruments;*
- d. storing the acquired air pollution data in a data storage facility (160);*
- e. with data modeling software (165), correlating the acquired air pollution observation data and deriving, from the correlated atmospheric air pollution observations and information specific to the end-user, at least one of actionable information specific to the end-user, alerts specific to the end-user, advisories*

*specific to the end-user, and recommendations specific to the end-user; and*  
*f. delivering at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user to an end-user platform."*

- X. Claims 1 and 12 of the **first auxiliary request** (previously auxiliary request AAR14) read as follows (with additions to claims 1 and 12 of the **main request** underlined and deletions ~~struck through~~):

*"1. A network-based system for providing real-time or near-real-time air pollution observations and information derived therefrom, the system comprising:*  
*a. a plurality of low earth orbit satellites (100) carrying atmospheric air pollution observation instruments providing global coverage of the earth configured to obtain air pollution observation data from ground level through the stratosphere;*  
*b. a plurality of manned or unmanned aerial vehicles (282, 285, 290, 294) carrying atmospheric air pollution observation instruments (283, 287, 291, 295) configured to obtain air pollution observation data;*  
*c. a plurality of terrestrial sensor stations (135, 255, 270, 298) containing atmospheric air pollution observation instruments configured to obtain local air pollution observation data;*  
*d. a data storage facility (160) configured to store the obtained air pollution data;*  
*e. data modeling software (165) configured to correlate the obtained atmospheric air pollution observations and to derive, from the correlated atmospheric air pollution observations and information specific to an end-user, at least one of actionable information*

*specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user, wherein the data modelling software (165) includes a health correlation module (1140) which contains data representing health-related criteria pertaining to air pollution components and is configured to evaluate the correlated air pollution observations for comparison to the health-related criteria and to generate air pollution density index values and health-related assessments for the air pollution components; and*

*f. a data delivery platform configured to provide at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user."*

*"12. A method of providing real-time or near-real-time air pollution observation services to an end-user, the method comprising:*

- a. acquiring air pollution observation data from a group of low earth orbit satellites (100) carrying atmospheric air pollution observation instruments and sensors providing global coverage of the earth from ground level through the stratosphere;*
- b. acquiring air pollution observation data from a plurality of manned or unmanned aerial vehicles (282, 285, 290, 294) carrying atmospheric air pollution observation instruments (283, 287, 291, 295);*
- c. acquiring local air pollution observation data from a plurality of terrestrial sensor stations (135, 255, 270, 298) containing atmospheric air pollution observation instruments;*
- d. storing the acquired air pollution data in a data storage facility (160);*

e. with data modeling software (165), correlating the acquired air pollution observation data and deriving, from the correlated atmospheric air pollution observations and information specific to an ~~the~~-end-user, at least one of actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user, wherein the data modelling software (165) includes a health correlation module (1140) which contains data representing health related criteria pertaining to air pollution components and evaluates the correlated air pollution observations for comparison to the health-related criteria and to generate air pollution density index values and health-related assessments for the air pollution components; and

f. delivering at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user to an end-user platform."

## **Reasons for the Decision**

1. The appeal is admissible.

*Main request (AMR) - admittance*

2. The claims of the main request (AMR) filed with the statement of grounds of appeal are identical to the claims of the main request (MR) underlying the decision under appeal.

The main request is thus part of the proprietor-appellant's appeal case and the board has no discretion not to admit it (Article 12(2) and (4) RPBA).

*Main request - interpretation of terms in claims 1 and 12*

3. Claim 1 of the main request reads as follows (with additions to claim 1 of the **granted patent** underlined and deletions ~~struck through~~):

*"1. A network-based system for providing real-time or near-real-time air pollution observations and information derived therefrom, the system comprising:*

- a. a plurality of low earth orbit satellites (100) carrying atmospheric air pollution observation instruments providing global coverage of the earth configured to obtain air pollution observation data from ground level through the stratosphere;*
- b. a plurality of manned or unmanned aerial vehicles (282, 285, 290, 294) carrying atmospheric air pollution observation instruments (283, 287, 291, 295) configured to obtain air pollution observation data;*
- c. a plurality of terrestrial sensor stations (135, 255, 270, 298) containing atmospheric air pollution observation instruments configured to obtain local air pollution observation data;*
- d. a data storage facility (160) configured to store the obtained air pollution data;*
- e. data modeling software (165) configured to correlate the obtained atmospheric air pollution observations and to derive, from the correlated atmospheric air pollution observations and information specific to an end-user, at least one of actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to ~~an~~ the end-user; and*

*f. a data delivery platform configured to provide at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to ~~an~~the end-user."*

4. In the board's view, the following features of claim 1 of the main request, which were already present in claim 1 of the patent as granted and thus may not be examined for compliance with the requirements of Article 84 EPC (see decision G 3/14 (OJ EPO 2015, A102); Case Law of the Boards of Appeal of the European Patent Office ("Case Law"), 11th edition 2025, IV.C. 5.2.2), have a meaning which may be confusing and thus need to be interpreted before assessing whether claim 1 meets the requirements of Article 123(2) EPC.

4.1 Claim 1 of the main request uses the expressions "*air pollution observation data*", "*air pollution observations*" and "*air pollution data*". The board interprets these expressions as having the same meaning, namely "*air pollution observation data*". A similar interpretation is made in claim 12.

The parties did not dispute this interpretation.

4.2 Meaning of "*specific to an end-user*"

The board interprets the expression "*specific to an end-user*", which was present in claim 1 of the patent as granted, as meaning adapted to a specific end-user based on information about that end-user. A similar interpretation is made in claim 12.

The parties did not dispute this interpretation.

#### 4.3 Meaning of "data delivery platform"

The respondent-opponent argued that the "data delivery platform" in feature (f) of claim 1 of the main request, which is "configured to provide at least one of the actionable information specific to the end-user, alerts specific to the end-user, advisories specific to the end-user, and recommendations specific to the end-user", was to be construed as implying a data transfer to an end-user platform and thus excluded merely presenting data to the end-user on a display screen. This could be derived from the corresponding feature (f) in claim 12 of the main request, which explicitly mentioned the end-user platform.

The appellant-proprietor argued that the "data delivery platform" in feature (f) of claim 1 of the main request should be construed as also covering merely presenting data to the end-user on a display screen.

The board concurs with the respondent-opponent that the interpretation of the term "data delivery platform" should be the same in independent claims 1 and 12. According to claim 1, the data delivery platform provides data to the **end-user**; however, in claim 12, the corresponding step of delivering data delivers data to the **end-user platform**. Hence the board considers that the "data delivery platform" must be interpreted as delivering data to the end-user platform.

The respondent-opponent submitted that it followed from this interpretation that the "data delivery platform" must be the whole module 175 in Figure 11 of the patent specification.

The board does not agree with the respondent-opponent on that point because only the last module 1145 of the information presentation software module 175 concerns the transfer of data to the end-user platform by preparing a file for transfer (see paragraphs [0108] and [0109] of the patent specification, corresponding to paragraphs [0119] and [0120] of the application as filed).

In the board's interpretation, the "*data delivery platform*" in claim 1 of the main request corresponds to the last module 1145 of the information presentation software module 175 in Figure 11.

#### 4.4 Meaning of "*data modeling software*"

The appellant-proprietor submitted that the "*data modeling software*" corresponded to the analytic software module 165, the database 170 and at least part of the information presentation software module 175 (see Figure 11).

The respondent-opponent argued that the "*data modeling software*" in claim 1 of the main request corresponded to the analytic software module 165 only (see Figure 10). It referred to paragraph [0124] of the application as filed (corresponding to paragraph [0113] of the patent specification), which mentions "*one or more data modeling software systems for correlation, analysis of collected data, data fusion, and conversion to actionable information*" as evidence of this.

The board concurs with the appellant-proprietor regarding the interpretation of "*data modeling software*" for the following reasons.

The patent specification (and likewise the application as filed) does not contain a definition of "*data modeling software*". The module 165 generates generic information, not information specific to an end-user (see the interpretation of "*specific to an end-user*" in point 4.2 above), contrary to feature (e) of claim 1 of the main request. In the board's view, the "*data modeling software*" as defined in feature (e) of claim 1 corresponds to the analytic software module 165, the database 170 and at least part of the information presentation software module 175, as argued by the appellant-proprietor. Paragraph [0124], referred to by the respondent-opponent, is at most an attempt at summarising the previous disclosure, not a proper definition of "*data modeling software*". Moreover, in order to limit the "*one or more data modeling software systems*" to the analytic software module 165 only, the "*actionable information*" mentioned in paragraph [0124] would have to be generic only, which is not disclosed in this paragraph.

*Main request - Article 123(2) EPC*

5. The opposition division held that feature (e) of claim 1 of the main request comprised subject-matter extending beyond the content of the application as filed (Article 123(2) EPC) for reasons which may be summarised as follows.

**Objection 1**

It was not directly and unambiguously derivable from the application as filed that the data modelling software, which corresponded to the analytic software module 165 in Figure 10, could derive end-user-specific

alerts, advisories or actionable information (see points 17.1 to 17.4 of the impugned decision).

## **Objection 2**

It was not directly and unambiguously derivable from the application as filed that "*to correlate*" and "*to derive*" in claim 1 of the main request were a subset of "*analysis*" and "*conversion*" in claim 1 of the application as filed (see points 17.5 to 17.7 of the impugned decision).

6. Re objection 1

6.1 The appellant-proprietor's arguments may be summarised as follows.

The opposition division considered that the "*data modeling software*" in claim 1 corresponded to the analytic software module 165 in Figure 10 and that the "*data delivery platform*" in claim 1 corresponded to the information presentation software module 175 in Figure 11; however, this division/mapping was artificial and unjustified. The "*data modeling software*" could have the functionality provided by both the analytic software module 165 and the information presentation software module 175. These two modules together provided end-user-specific alerts, advisories, actionable information or recommendations (see points 7.3.3 to 7.3.13 on pages 4 to 7 of the statement of grounds of appeal).

6.2 The respondent-opponent argued essentially as follows.

The opposition division's reasoning was correct. The "*data modeling software*" in claim 1 corresponded to the

analytic software module 165 in Figure 10 and the "*data delivery platform*" in claim 1 corresponded to the information presentation software module 175 in Figure 11 in the sole detailed embodiment of the invention (see point 2.1 on pages 4 to 6 of the letter dated 26 October 2023).

6.3 The board does not find objection 1 persuasive for the following reasons.

The board concurs with the appellant-proprietor that the "*data modeling software*" and "*data delivery platform*" in claim 1 of the main request do not necessarily correspond to the analytic software module 165 in Figure 10 and the information presentation software module 175 in Figure 11, respectively, in the application as filed (see also points 4.3 and 4.4 above). Indeed, these four entities have different names and thus do not necessarily match one to one. The fact that reference signs 165 and 175 are associated with the "*data modeling software*" and "*data delivery platform*" in the claims of the main request bears little weight because no such reference signs were present in the claims of the application as filed and, according to Rule 43(7) EPC, reference signs do not limit the claims.

The board agrees with the opposition division and the respondent-opponent that the information created by the analytic software module 165 shown in Figures 1 and 10 and stored in the "*database of analyzed information 170*" is not end-user specific (see paragraphs [0089] to [0116] of the application as filed relating to Figure 10). The analytic software module 165 may generate general alerts, recommendations and/or actionable information (see paragraphs [0113] to

[0115]), for instance relating to various health-care disciplines such as pulmonary care or skin care based on air pollution levels, which may be useful to end-users; however, these alerts, recommendations and/or actionable information, which are potentially of interest to various groups of end-users, are not "*specific to an end-user*" because they are not adapted to a specific end-user based on information about that end-user (see also point 4.2 above).

However, the information presentation software module 175 shown in Figures 1 and 11 can receive information about an end-user and create alerts, advisories, recommendations and/or actionable information which are specific to that end-user (see paragraph [0120], in particular the first two sentences and the last sentence, and paragraph [0122] of the application as filed).

The "*data delivery platform*" in claim 1 of the main request does not have to correspond to the whole of the presentation software module 175 for the reasons given under point 4.3 above. Hence, the respondent-opponent's argument that the "*data modeling software*" cannot include part of the module 175 because the whole of module 175 belongs to the "*data delivery platform*" must fail.

7. Re objection 2

7.1 The board concurs with the appellant-proprietor that "*correlation*" and "*derivation*" may be regarded as a subset of "*analysis*" and "*conversion*" based on their natural English-language meaning.

Although some passages of the application as filed (e.g. the first sentence of paragraph [0010]) may give the impression that analysis and correlation are separate steps, the fact that the analytic software module 165 comprises several correlation modules (1005, 1010, 1015, 1025, 1040) leaves no doubt that correlation is a subset of analysis (see Figure 10 and paragraphs [0106] to [0113]).

As for "*derivation*", it has essentially the same broad meaning as "*conversion*".

- 7.2 During the oral proceedings before the board, the respondent-opponent argued as follows, *inter alia*.

According to paragraph [0113] of the application as filed, the generation of alerts or actionable information necessarily required a comparison with health-related criteria in the data modelling software (see the health-correlation module 1040 in the module 165) according to the sole embodiment disclosed in Figures 10 and 11. Since the data modelling software in feature (e) of claim 1 of the main request did not comprise this feature, it was an unallowable intermediate generalisation.

- 7.3 Admissibility of a new argument

- 7.3.1 The appellant-proprietor objected that this was a new argument which was not to be admitted under Article 13(2) RPBA.

- 7.3.2 The respondent-opponent replied that it was not a fresh argument, but a refinement of a previous argument in response to the board's preliminary opinion in the communication under Article 15(1) RPBA.

7.3.3 The board concurs with the respondent-opponent for the following reasons.

The respondent-opponent had already pointed out in its reply to the statement of grounds of appeal that the comparison with a health profile was both necessary in and missing from claim 1 (see "*Nous notons également que la paragraphe 69 précise également que les données spécifiques à un utilisateur sont basées sur un « health profile », qui est absent de la revendication 1.*" on page 7).

This argument was already further refined in the respondent-opponent's letter dated 8 September 2025 filed in response to the board's preliminary opinion ( see on page 6: "*il apparait clairement que les modules 1040 et 1045 sont nécessaires pour déterminer des « alerts, advisories, actionable information » :*  
- *Le « health correlation module 1040 » détermine des « alerts and warnings » (paragraphe [0113] de la demande telle que déposée) "*  
- *Le « health-care information-fusion module 1045 » détermine des « actionable health care information » (paragraphe [0114] de la demande telle que déposée) "*).

Hence, the respondent-opponent's argument under point 7.2 above is not a fresh argument, but the refinement of a previous argument.

This refinement of an argument which had already been put forward in the reply to the statement of grounds of appeal is not an amendment to the party's case. Therefore, the board has no discretion not to admit this refinement.

7.4 Assessment under Article 123(2) EPC

7.4.1 The appellant-proprietor's substantive reply to the respondent-opponent's argument (see point 7.2 above) may be summarised as follows.

Paragraphs [0048] to [0055] of the application as filed disclosed embodiments which mentioned data correlation and provision of personalised or end-user-specific data but mentioned neither a health profile nor a comparison with it.

Moreover, according to paragraph [0132], as well as the last sentence of either paragraph [0119] or [0120], of the application as filed, alerts and recommendations for specific actions could be appropriate to the location or specific request of the end-user, rather than to the health of the end-user.

Finally, the last sentence of paragraph [0008] of the application as filed mentioned both health-care and agriculture, thus implying that health-care was not the sole potential application of the invention.

From the above passages of the application as filed, it was directly and unambiguously derivable that the comparison with health-related criteria was neither essential nor inextricably linked to other features of claim 1 of the main request.

Hence, feature (e) of claim 1 of the main request was an allowable intermediate generalisation.

7.4.2 The board does not find the appellant-proprietor's arguments persuasive for the reasons set out below.

Each of paragraphs [0048] to [0055] of the application as filed briefly (three to five lines per paragraph) discloses a different embodiment. It is unclear whether the embodiments disclosed in those paragraphs comprise all the features of claim 1. In the board's view, it cannot be directly and unambiguously derived from those paragraphs that end-user-specific actionable information, alerts, advisories and/or recommendations are provided to the end-user, as specified in claim 1 of the main request. For instance, the board does not regard the display of "*destination air pollution condition reports and predictions*" on "*airline schedule display boards in airports*" in paragraph [0052] as being actionable information, alerts, advisories and/or recommendations "*specific to the end-user*".

The board understands paragraph [0132], as well as the last sentence of either paragraph [0119] or [0120], in the context of the whole application as filed as meaning that a location or a specific user request may be taken into account in addition to, not instead of, health-related criteria for deciding whether to issue an alert or recommendation to an end-user.

The mention of agriculture in paragraph [0008] of the application is made in the context of the description of the background prior art. Since agriculture is not mentioned anywhere else in the application as filed, it cannot be directly and unambiguously derived from this single reference to agriculture that air pollution observation data does not have to be compared with health-related criteria.

8. Conclusion on Article 123(2) EPC (added subject-matter)

For the reasons given in section 7. above, the board considers that the system of claim 1 of the main request does not meet the requirements of Article 123(2) EPC.

The same conclusion applies, *mutatis mutandis*, to the method of claim 12 of the main request.

*Conclusion on the main request*

9. For the above reasons, the main request does not meet the requirements of Article 123(2) EPC.

*Admissibility of the reordering of auxiliary requests*

10. During the oral proceedings, the appellant-proprietor reordered its auxiliary requests by making auxiliary request AAR14 its first auxiliary request.
11. The respondent-opponent submitted that the reordering of auxiliary requests AAR1 to AAR17 was not to be admitted under Article 13(2) RPBA because it was a late-filed modification of means not justified by exceptional circumstances.
12. In the present case, the board considers that the question of whether the reordering of the requests is an amendment to the appellant-proprietor's appeal case can be left unanswered (see Case Law, V.A.4.2.3 i) because, even if for the sake of argument, the board considered it to be an amendment, the reordering of the auxiliary requests would be admitted into the proceedings for the reasons set out below.

In its communication under Article 15(1) RPBA, the board had expressed the preliminary opinion that the

main request met the requirements of Article 123(2) EPC.

However, during the oral proceedings, the respondent-opponent submitted a refined argument which reversed the board's view on Article 123(2) EPC (see sections 7.3 and 7.4 above).

As pointed out by the Chair during the oral proceedings, it was *prima facie* clear that auxiliary requests AAR1 to AAR13 could not overcome the respondent-opponent's refined objection under Article 123(2) EPC, but that auxiliary request AAR14 possibly could. Hence, the reordering of the auxiliary requests was not only fair, but also served procedural economy.

The above circumstances constituted exceptional circumstances within the meaning of Article 13(2) EPC.

In view of the above, the board admitted the reordering of the auxiliary requests.

*Admittance of the first auxiliary request (previously auxiliary request AAR14) under Article 12(3) and (5) RPBA*

13. The respondent-opponent submitted that the first auxiliary request (previously auxiliary request AAR14) was not to be admitted under Article 12(3) and (5) RPBA for the following reasons.

In the statement of grounds of appeal, the appellant-proprietor did not provide specific reasons why the then auxiliary request AAR14 met the requirements of Article 123(2) EPC. Instead, it merely stated that auxiliary request AAR14 met the requirements of

Article 123(2) EPC for the same reasons as the auxiliary request AAR1 (see point 11 of the statement of grounds of appeal). The appellant-proprietor's submissions filed during the first-instance proceedings were annexed to the statement of grounds of appeal; however, it was established case law of the boards of appeal that such first-instance submissions could not provide specific reasons why the finding and the reasoning in the decision under appeal was supposedly incorrect. The respondent-opponent cited decisions T 2117/18 and T 2214/21 as examples of this case law.

14. The board decided to exercise its discretion under Article 12(3) and (5) RPBA to admit the first auxiliary request (previously auxiliary request AAR14) for the reasons set out below.

The board concurs with the respondent-opponent that it is established case law of the boards of appeal that the statement of grounds of appeal and any reply to it must contain the party's complete case and that references to first-instance submissions cannot provide specific reasons why the finding and the reasoning in the decision under appeal is supposedly incorrect (Case Law, V.A.4.3.5).

The first auxiliary request is identical to auxiliary request AR16 underlying the decision under appeal. According to the reasons for the decision, auxiliary request AR16 was not allowable because one of the objections under Article 123(2) EPC against the main request also applied to auxiliary request AR16 (see point 18 of the Reasons).

In other words, there were no reasons specific to auxiliary request AR16 why it did not meet the requirements of Article 123(2) EPC.

In the statement of grounds of appeal, the appellant-proprietor gave reasons why the main request and the then auxiliary request AAR1 met the requirements of Article 123(2) EPC. Regarding the current first auxiliary request (AR16 in the decision, AAR14 in the statement of grounds of appeal), the appellant-proprietor stated that it met the requirements of Article 123(2) EPC for the same reasons as for auxiliary request AAR1 (see point 11.4 of the statement of grounds of appeal).

Under the above circumstances, the board considers that, in the statement of grounds of appeal and without considering the annexes, it was sufficiently substantiated why the first auxiliary request (then auxiliary request AAR14) met the requirements of Article 123(2) EPC. Decisions T 2117/18 and T 2214/21 cited by the respondent-opponent are thus not relevant because they concern a different situation in which the substantiation was insufficient in the statement of grounds of appeal itself (i.e. without references to annexed first-instance submissions).

*First auxiliary request (previously auxiliary request AAR14) - Article 84 EPC*

15. Admissibility of new arguments under Article 84 EPC (Article 13(2) RPBA)
- 15.1 The respondent-opponent argued that claim 1 of the first auxiliary request did not meet the requirements of Article 84 EPC for the following reasons.

(1) The term "*information specific to the end-user*" was used in claim 1 to refer to two different entities, one input to the data modelling software, the other one output by the data modelling software. This created a lack of clarity.

(2) A second comparison with "*certain values*" disclosed in paragraph [0113] was an essential feature which was missing from claim 1.

(3) The amended wording of claim 1 introduced new terms which did not have a clear meaning, such as "*health correlation module*", "*health-related criteria*" and "*health-related assessments*".

15.2 The appellant-proprietor submitted that these arguments were new arguments which should have been filed earlier and thus were not to be admitted under Article 13(2) RPBA.

15.3 The respondent-opponent pointed out that there had been no opportunity to discuss clarity (Article 84 EPC) before the opposition division because the first auxiliary request (then auxiliary request AR16) had been held not to comply with Article 123(2) EPC. Moreover, its letter of reply to the statement of grounds of appeal comprised argument (1) (see point 2.4 on pages 13 and 14).

15.4 The board decided not to admit arguments (2) and (3) for the following reasons.

The respondent-opponent's letter of reply to the statement of grounds appeal contained the letter itself

and three annexes (the notice of opposition, a letter of 29 November 2022 and a letter of 20 January 2023).

The letter of reply itself comprised argument (1) (see point 2.4 on page 13) but neither argument (2) nor argument (3).

The case law (Case Law, V.A.4.3.5) discussed in section 14. above also applies to submissions by an opponent.

Since arguments (2) and (3) were not in the reply (without the annexes) to the statement of grounds of appeal, the board exercised its discretion under Article 12(3) and (5) RPBA not to admit them into the appeal proceedings.

16. Assessment of argument (1) under Article 84 EPC
- 16.1 Regarding argument (1), the appellant-proprietor essentially argued that the two expressions were not identical because the one input to the data modelling software was "*information specific to the end-user*" and the one output by the data modelling software was "*actionable information specific to the end-user*". For the skilled person, there would be no confusion between these two expressions.
- 16.2 The board concurs with the appellant-proprietor regarding argument (1).
17. Additional remark from the board regarding the clarity of claims 1 and 12 of the first auxiliary request

The board is aware that the reference sign "1140" in the expression "*health correlation module (1140)*" in

claims 1 and 12 is incorrect and should read "1040"; however, the error and its correction are obvious. The board thus considers that this typographical error does not affect the clarity of claims 1 and 12 of the first auxiliary request.

18. Conclusion on Article 84 EPC

For the above reasons, the board considers that the post-grant amendments to the claims of the first auxiliary request meet the requirements of Article 84 EPC.

*First auxiliary request (previously auxiliary request AAR14) - Article 123(2) EPC*

19. The respondent-opponent essentially argued as follows.

The additional features of claims 1 and 12 of the first auxiliary request introduced only some of the features of the module 1040 disclosed in paragraph [0113] and none of the features of the module 1045 disclosed in paragraphs [0114] and [0115]. The missing features of the module 1040 were the second comparison with "*certain values*", which was necessary for deriving "*alerts*". The features of the module 1045 were necessary for deriving "*actionable information*" and "*recommendations*". Since all those features were inextricably linked, the claimed subject-matter was an unallowable intermediate generalisation which did not meet the requirements of Article 123(2) EPC.

20. The appellant-proprietor essentially argued that all the relevant features for deriving at least one of actionable information, alerts, advisories and recommendations were already appropriately encompassed

by the "comparison to the health-related criteria" in claims 1 and 12.

21. The board concurs with the appellant-proprietor for the following reasons.

Paragraphs [0113] to [0115] of the application read as follows.

*"[00113] The resulting information is then passed to a health correlation module 1040 which contains data representing health-related criteria pertaining to each air pollution component. This module evaluates the information passed into it for comparison to the said criteria, and generates air pollution density index values and health-related assessments for each air pollution component. Should any component exceed certain values, the module generates alerts and warnings which are then stored for retrieval by any end-user or end-user agent such as a presentation application or mobile app."*

*"[00114] The resulting information is then passed to a health-care information-fusion module 1045 and compared to and fused with statically held health care information and predictive algorithms stored in the database 120 relevant to each of several health-care disciplines, such as pulmonary care and skin care. This module also generates discipline-specific actionable health-care information for immediate benefit to end-users and long-term health benefits."*

*"[00115] The resulting geospatially correlated mapping (from 1030), four-dimensional animations (from 1035), and indices and alerts (from 1040), and health-care*

*specific recommendations (from 1045) are transferred 220 to a database of analyzed information 170."*

The board concurs with the appellant-proprietor that the skilled person would understand the comparison with "*certain values*" in paragraph [0113] to be part of the comparison with health-related criteria mentioned in the preceding sentence. Similarly, the skilled person would understand the functions performed by the health-care information-fusion module 1045 in paragraph [0114] (see "*compared to ... health care information*") to also generally fall under the "*comparison to the health-related criteria*" in claims 1 and 12 of the first auxiliary request.

For the above reasons, the board considers that the subject-matter claims 1 and 12 of the first auxiliary request is an allowable intermediate generalisation, i.e. an intermediate generalisation which meets the requirements of Article 123(2) EPC.

22. Conclusion on Article 123(2) EPC

For the above reasons, the board considers that the subject-matter of the claims of the first auxiliary request meets the requirements of Article 123(2) EPC.

*First auxiliary request (previously auxiliary request AAR14) - Article 123(3) EPC*

23. No objection under Article 123(3) EPC was raised against the first auxiliary request, either by the opposition division in the decision under appeal or by the respondent-opponent on appeal.

*Conclusion on the first auxiliary request*

24. For the above reasons, the board considers that the first auxiliary request meets the requirements of Articles 84, 123(2) and (3) EPC.

*Requests for remittal*

25. Under Article 111(1) EPC, the board, in deciding upon the appeal, may exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

According to Article 11 RPBA, a remittal should be the exception, requiring special reasons for it to be ordered.

Since the primary purpose of the appeal proceedings is to give the losing party a possibility to challenge the decision of the opposition division on its merits (see G 10/91, point 18 of the Reasons), remittal in accordance with Article 111(1) EPC has normally been considered by the boards to be appropriate in cases in which the opposition division issues a decision on particular issues (e.g. added subject-matter) and leaves other substantive issues (e.g. sufficiency of disclosure, novelty and inventive step) undecided. This existing practice aligns with the primary object of appeal proceedings to review the decision under appeal in a judicial manner, as expressed in Article 12(2) RPBA.

26. Both parties have requested remittal of the case to the opposition division if the board were to come to the conclusion that at least one of the sets of

claims filed with the statement of grounds of appeal meets the requirements of Article 123(2) and (3) EPC.

27. In the case in hand, the board considers that all the above elements constitute special reasons that justify remittal in accordance with Article 11 RPBA.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chair:



K. Boelicke

B. Willems

Decision electronically authenticated